



Claire McCaskill

Missouri State Auditor

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TRANSPORTATION

Acquisition and Management of Right- of-Way Property



MoDOT's Process to Buy Property for Road Projects Considered Unfair by Some Property Owners

This audit reviewed how well MoDOT works with property owners when buying property for road projects, which is commonly known as right-of-way (ROW) property. MoDOT spent an average of \$63 million acquiring ROW property from fiscal years 2000 through 2004.

Some property owners said land price offers were unfair

Over half of the property owners surveyed by auditors said MoDOT's initial offer for their land was less than fair market value. Most often, MoDOT officials are buying property that is not for sale and this can result in contentious negotiations with someone who may not want to sell their property. About half the owners surveyed also said MoDOT gave "little or no consideration" to their input. (See page 9)

Property owners not provided appraisals until June 2004

Until June 2004, MoDOT would not give property owners a copy of the appraisals detailing how it determined property values. MoDOT began sharing appraisals with owners after outside peer reviewers made the suggestion. (See page 10)

Initial appraisals may not always reflect fair market value

Auditors reviewed 28 property acquisitions and found five with significant differences between initial and second appraisals. MoDOT generally prepared only one appraisal prior to making initial offers to property owners, with second appraisals only being prepared in condemnation cases or unusual situations. Auditors also found five properties in which comparable sales provided by the property owner were not considered in the initial appraisal, but affected the eventual negotiated price. In addition, MoDOT did not always include items in the appraisals for which the property owners should have been compensated. (See page 10)

MoDOT property buyers had no set negotiation limits

MoDOT had not established limits on how much ROW staff could negotiate with property owners, which led to inconsistent acquisitions. Auditors found no limits set on the amount a ROW manager can approve over the appraised amount. (See page 15)

Inconsistent practices on when to buy unneeded property

Auditors found district-to-district differences in how MoDOT officials handled property owners who wanted to sell MoDOT remaining portions of property not needed for the road project. Auditors found the officials in some districts would generally not buy more property than was needed. Officials in another district said they almost always buy all the owner's property if such a request is made. (See page 15)



Claire McCaskill
Missouri State Auditor

YELLOW SHEET

No guidance exists on buying property for projects not on construction plan

Auditors found MoDOT owns nearly 8,000 acres of future ROW property related to projects not included on its 5-year construction plan. MoDOT has owned about half the land for 25 years or more, including some dating back to the 1920s. (See page 17)

MoDOT leased property for nominal amounts or no cost

Auditors found MoDOT leased 234 properties to other parties and received rent of \$20 a year or less for about half of these leases - some at no cost. Lease records did not contain justification for the lack of compensation for most of these leases. In 13 cases, MoDOT paid \$1.7 million for the related properties, but subsequently leased the properties back to the previous owners for nothing or \$1. (See page 22)

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CLAIRE McCASKILL
Missouri State Auditor

Honorable Matt Blunt, Governor
and
Missouri Highways and Transportation Commission
and
Pete K. Rahn, Director
Department of Transportation
Jefferson City, MO 65102

The Missouri Department of Transportation (MoDOT) spent an average of \$63 million acquiring property for transportation purposes for fiscal years 2000 through 2004, which has affected public and private landowners. In May 2004, we reported MoDOT had inadequate right-of-way (ROW) property records and needed improvements in identifying unneeded property on completed or future projects. This report highlights problems with the acquisition of right-of-way property, and MoDOT's leasing of right-of-way property.

Improvements are needed in MoDOT's right-of-way acquisition process. A significant portion of sampled property owners believed MoDOT's initial offers had been less than fair and MoDOT had not adequately considered owners' input. Also, MoDOT's appraisal process has not always assured initial appraisals reflected fair market value. We also found improvements are needed in the leasing of right-of-way property because MoDOT has not ensured (1) ROW property leased for nominal amounts has been properly supported, (2) future ROW properties have always been evaluated for leasing potential, and (3) leasing policies and requirements have been followed. We have made recommendations which we believe will help MoDOT address these weaknesses.

We conducted our work in accordance with Government Auditing Standards issued by the Comptroller General of the United States. This report was prepared under the direction of Kirk Boyer, Director. Key contributors to this report included Gregory Slinkard, Kim Spraggs, Tsetsegsaikhan (Flower) Chadraabal, Monte Davault, Susan Fifer, Anne Jenkins, and Christy Marsh.

A handwritten signature in cursive script that reads "Claire McCaskill".

Claire McCaskill
State Auditor

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Abbreviations

CFR	Code of Federal Regulations
MoDOT	Missouri Department of Transportation
QAR	Quality Assurance Review
ROW	Right-Of-Way
RSMo	Revised Statutes of Missouri
SAO	State Auditor's Office
USC	United States Code

Introduction

MoDOT purchases property from private and public landowners to build roads and bridges, and for other transportation purposes. Property purchased for road and bridge purposes is commonly referred to as right-of-way property. MoDOT's ROW division is responsible for overseeing the acquisition and management of this property, and works with the ten district offices located around the state.

MoDOT is one of several state agencies with the authority to exercise the power of eminent domain to acquire property. When the Missouri Highways and Transportation Commission approves projects to build new roads and bridges or widen existing highways, it often needs to buy land for ROW purposes. The state spends millions of dollars each year to acquire ROW property, and to relocate displaced property owners. Table 1.1 shows annual MoDOT ROW property expenditures for fiscal years 2000 through 2004.

Table 1.1: Annual Expenditures for ROW Property

Fiscal year	Expenditures for ROW property	Number of acres acquired¹
2000	\$52,892,879	2,370
2001	62,318,487	3,073
2002	68,301,174	2,530
2003	85,147,405	2,400
2004	49,099,746	1,291

¹ Includes an insignificant amount of permanent easements.

Source: Expenditures posted to Statewide Advantage for Missouri (SAM II) system and MoDOT ROW division records.

For each piece of property MoDOT needs to acquire, a district appraiser, or a private contracted appraiser hired by MoDOT, prepares an appraisal of the property's fair market value. Before an appraisal is accepted, a district review appraiser examines the appraisal to determine if it is thorough, accurate, and contains a reasonable estimate of the fair market value of the property. Part of this evaluation involves an on-site visit to the property as well as reviewing comparable sales used to appraise the property. The review appraiser makes changes deemed appropriate, and documents those changes. Federal regulations¹ require MoDOT's initial offer for ROW property to not be less than the amount approved by the review appraiser. This requirement is intended to ensure the initial offer represents a reasonable offer for the property.

After the appraisal has been prepared and reviewed, an initial offer is tendered to the property owner. If the property owner does not accept the initial offer, MoDOT negotiates with the property owner on the price to be

¹ 49 CFR 24.102(d)

paid. If initial negotiations are not successful, MoDOT will offer the property owner a mediation process in an effort to reach a settlement. For practical purposes, the property owner has no recourse but to ultimately sell the property to MoDOT. However, in cases where the property owner and MoDOT cannot agree on a purchase price through the negotiation or mediation processes, the case is referred to MoDOT's chief counsel's office for legal negotiations, which can include the initiation of condemnation proceedings.² In such cases, the amount paid to the affected property owner is determined by a three-person commission appointed by the circuit court in the county where the property is located. If either MoDOT or the property owner disagrees with the amount awarded by this commission, an exception can be filed and the compensation amount may ultimately be decided in court by a jury.

Unused ROW property can be classified as either excess ROW, pre-construction ROW, or future ROW. Excess ROW property represents real estate which is surplus to current and future transportation needs and is generally available for sale or disposal. Pre-construction ROW property represents real estate that has been acquired for highway projects that have not yet been constructed, but construction is programmed in the current 5-year transportation improvement plan. Future ROW property represents real estate that has been acquired for highway projects that have not yet been constructed, are not planned for construction during the current 5-year transportation improvement plan, and are being held for future use when project funding is available. Most of this property is acquired for projects with the intent to build additional lanes, interchanges, or outer roads in the future.

MoDOT may lease future ROW property when road construction on the property is not imminent. MoDOT policies require the district ROW management committee to review each lease request. If the district committee approves the property lease, the district will forward the request to headquarters ROW division officials for review and approval. Department policy requires a rental study be completed for each leased property to determine the fair market value of the lease, which is used as the basis for the rental price. The rental study is to be updated with each renewal of the lease agreement, with most lease agreements having 5-year terms.

The department sold 149 excess parcels for \$3.4 million, 178 excess parcels for \$1.5 million, and 80 excess parcels for \$1.1 million during fiscal years

² Condemnation proceedings are authorized pursuant to Chapter 523, RSMo 2000.

2004, 2003, and 2002, respectively.³ Revenues from leases totaled \$536,900, \$537,600, and \$664,700 during fiscal years 2004, 2003, and 2002, respectively. MoDOT leased 218 ROW properties, as of June 30, 2004.

MoDOT's ROW program received an external peer review at the department's request in September 2003. The review team was comprised of officials from the Federal Highway Administration and two other state transportation departments. In a report, dated January 7, 2004, the review team made recommendations to improve the effectiveness and efficiency of the ROW program. Recommendations were made in various areas, including planning, communication and training, property management, appraisal and acquisition processes, and policies and procedures.

Previous SAO Work

Our previous report⁴ evaluated the department's ROW records and procedures for identifying unneeded property on completed or future projects. That report disclosed MoDOT had not maintained a comprehensive record of all ROW property it owned, including excess ROW property on completed projects and ROW property intended for use on future projects. In addition, MoDOT had not established a database of all ROW property, nor had it developed adequate procedures to identify and periodically evaluate property which may no longer be needed on completed or future projects. Also, MoDOT could have more actively marketed excess ROW properties it had identified.

Our report included the following recommendations:

- Develop a comprehensive inventory system of all ROW property owned, including all excess and future property. To accomplish this, comprehensive policies and procedures to identify and classify all ROW property are needed.
- Establish comprehensive procedures to evaluate ROW properties to determine unneeded, or excess, properties. Procedures should clearly indicate when the evaluations are to be conducted, provide instructions or guidelines in conducting the evaluations, and require the evaluations be documented.

³ These amounts include both ROW and non-ROW properties sold, with a significant portion being ROW properties.

⁴ Review of Department of Transportation's Excess and Future Right-Of-Way Property (Report no. 2004-36, May 7, 2004).

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- Require future ROW property be evaluated on a periodic basis to determine whether property is still needed for future projects.
 - More actively market excess ROW property no longer needed for current or future projects. Excess property should be analyzed to determine the feasibility and cost/benefits of selling the property.

We discussed the current status of these recommendations with ROW division officials in August 2004. Officials stated improvements are planned, or in process, to address various weaknesses reported. They said MoDOT is in the process of developing a comprehensive database system of all real estate owned by the department, including ROW property, and planned to revise the property management section of the ROW manual. They estimated the initial phase of the database system would be operational by the end of calendar year 2004, with new policies and procedures being implemented in phases.

Scope and Methodology

We surveyed 200 Missouri citizens or businesses that had property purchased by MoDOT between July 1, 2001 and June 30, 2003⁵ to obtain input on the ROW acquisition process and to determine how property owners felt they had been treated during the process. We received 125 survey⁶ responses (63 percent response rate). The survey form and summary responses are included in Appendix I.

We reviewed district files and interviewed MoDOT employees involved in the acquisition cases selected for detailed review noted below, and MoDOT district and headquarters staff responsible for ROW acquisition and management. Interviews involved individuals located at MoDOT headquarters and district offices in Jefferson City (District 5), St. Louis (District 6), and Springfield (District 8). Personnel included division management officials, district ROW managers, district and contracted negotiators, district and contracted (fee) appraisers, district property management staff, district engineers, and headquarters and district legal staff. Our interviews focused on the effect of (1) ROW policies and practices concerning selected acquisitions, (2) appraisal policies and practices, (3) ROW policies and practices about property management and oversight, and (4) other case-specific details that were not addressed by past or present policies.

⁵ During this time period, MoDOT made 2,324 ROW acquisition payments. We randomly selected the property owners surveyed from the 1,354 payments which exceeded \$5,000.

⁶ Survey responses received from three property owners who chose to only provide written comments were not included in the survey analysis.

To determine whether MoDOT handled ROW acquisitions according to policy, and adequately justified and documented prices paid, we examined both MoDOT's Parcel Acquisition System and its underlying data to attempt to determine the reliability of the information that the system provides. Where possible, we compared the data that the districts reported with that from their internal acquisition records. We conducted interviews with headquarters and ROW officials responsible for operating and maintaining the Parcel Acquisition System and selected district officials responsible for reporting the data and ensuring its accuracy. As part of our effort to examine MoDOT's Parcel Acquisition System, we reviewed the extent and quality of controls over ROW acquisition data. In doing so, we sought to determine whether (1) MoDOT had management controls in place to provide reasonable assurance that the Parcel Acquisition System data was valid and reliable and (2) parcel acquisition data was sufficiently reliable for our intended use. We identified and evaluated MoDOT's management controls over the processes to record and analyze acquisition data. We found information in the database was not sufficiently reliable for purposes of this report. As a result, we developed recommendations to help ensure the system accurately reflects complete records of acquisitions, and whether department policies were followed.

To accomplish our objectives, we evaluated 28 acquisitions of ROW properties by reviewing headquarters and district files, and interviewed responsible ROW officials at MoDOT's headquarters and three district offices to assess the overall effectiveness of MoDOT's existing property acquisition policies and procedures. We judgmentally selected the 28 acquisitions from MoDOT's records of acquisitions and the Statewide Advantage for Missouri (SAM II) system during the period from July 1, 2001 to June 30, 2003. This sample was designed to verify potential weaknesses or risks identified from our survey respondents, transactions with other agencies or MoDOT employees, or transactions with substantial differences between the original appraised amount and final purchase price.

To evaluate MoDOT's justification for the recent acquisition of future ROW property, we judgmentally selected 12 future ROW properties for review from listings of future ROW properties prepared by the districts.

To determine whether MoDOT effectively managed its ROW property, we performed tests to determine if (1) future ROW properties were marketed for leasing, (2) sale and leasing policies were followed, and (3) property management (leasing) records were accurate and complete.

As part of this testing, we selected and reviewed a statistically-based sample of 63 parcels from a population of 922 excess and future properties, per MoDOT records as of January 2004, and a statistically-based sample of 53

leases from a population of 234 properties leased, as of October 2003. Because of inadequate and unreliable MoDOT ROW records, we could not ensure the completeness of the population or project our test results based on these records.

For the various audit tests, we obtained documentation from and contacted various officials and employees throughout all ten districts. We also contacted the Arizona, California, Colorado, Iowa, and Washington transportation departments to compare MoDOT's procedures over ROW acquisitions and property management to the policies and procedures of those states.

MoDOT ROW division officials reviewed our surveys for comprehensiveness and technical accuracy, and the case study methodology. District officials told us selected ROW properties were representative of typical ROW acquisitions and management in those districts.

We requested comments on a draft of our report from the Director of Transportation, and those comments are reprinted in Appendix II. We conducted our work between March and September 2004.

Improvements Needed in Right-of-Way Property Acquisition Processes

Approximately half of surveyed property owners believed MoDOT's initial offers had been less than fair market value and MoDOT had not adequately considered owners' input. In addition, MoDOT's appraisal process has not always assured initial offers to property owners reflected fair market value. Subsequent appraisals often valued properties at higher levels because appraisers had differing opinions of property values, comparable sales were not always adequately identified and considered in appraisals and subsequent offers, and MoDOT appraisers had not always adequately considered non-land damages in appraisals, sometimes underestimated the value of property components, or missed items. MoDOT also lacked adequate guidance on when to prepare a second appraisal and appraisers had not always gotten adequate feedback on their performance. Weaknesses in the appraisal process may also contribute to more condemnation cases. MoDOT also lacked (1) consistent negotiation procedures on how much ROW staff could negotiate with property owners, (2) consistent guidance in determining when to buy unneeded property, and (3) guidance restricting the purchase of future ROW properties not funded in MoDOT's 5-year plan. In addition, MoDOT's ROW property acquisition database could not be used as intended. As a result, MoDOT cannot be assured its ROW property acquisition process is effective.

Some Property Owners Not Satisfied With Acquisition Process

ROW properties acquired by MoDOT usually were not for sale at the time they were acquired. As such, MoDOT was in the unenviable position of negotiating with property owners who did not necessarily want to sell their property. Property negotiations can become difficult and contentious, and many property owners may tend to view the process in a negative light. While 37 percent of our survey respondents believed the final purchase price was less or substantially less than fair market value, most property owners believed they received fair market value or more on the final purchase price.

Over half (55 percent) of the property owners responding to our survey reported MoDOT's initial offer for their property was less than fair market value, with 38 percent reporting they believed the initial offer was substantially less than fair market value. About half (47 percent) of the property owners believed their input received "little or no consideration" during MoDOT's acquisition of their property, and 56 percent believed their input received "little or no consideration" during the project design development process.⁷

⁷ Several steps in MoDOT's design and planning processes involve getting input from the community. MoDOT feels the community members can provide critical information on the most important needs since they are the ones who will use the roads.

Property owners responding to our survey had mixed opinions about their experience with the ROW acquisition process and whether MoDOT had treated them fairly. For example, one survey respondent indicated he believed MoDOT values property at the lowest possible value, rather than determining what is the fairest value in the interests of the property owner, who is making the sacrifice for the public good. Another survey respondent wrote: "MoDOT's people were very forthright in their dealings. They were knowledgeable and helpful in each portion of my dealings with them." A third survey respondent wrote: "I felt they started out with a low figure...after it was all settled I felt it was a fair deal for all concerned."

Property owners generally reported MoDOT employees had explained why their property had been needed, they had been given an adequate amount of time to consider MoDOT's offer, and MoDOT fulfilled all or most commitments made to them during the ROW acquisition process. Over half (57 percent) of the property owners responding to our survey indicated they had been treated fairly by MoDOT during the ROW acquisition process. However, property owners felt burdened by the acquisition process. Our survey found 68 percent of the property owners reported the property acquisition caused a commitment of their personal time, with 36 percent reporting that commitment to be great or very great.

Appraisals not provided to property owners until June 2004

Prior to June 1, 2004, MoDOT had not provided property owners a copy of appraisals documenting how property values and resulting initial offers had been determined. Although one negotiator said she allowed the property owner to view the appraisal, she said this had not been the standard practice and it had only been done by about half the negotiators in her district. One survey respondent indicated he did not know whether MoDOT's initial offer for his property had been fair because MoDOT staff refused to show him any research used in determining the offer amount.

The recent external ROW division peer review recommended MoDOT give copies of appraisals to property owners so they could better understand the appraiser's reasoning in the valuation of their property and to help in negotiations. MoDOT revised its procedures and now provides copies of appraisals to property owners. Districts received written notification of this change in a memo dated May 27, 2004, which advised giving out copies of appraisals on all projects for which ROW acquisition began after June 1, 2004.

Initial Appraisals May Not Always Reflect Fair Market Value

MoDOT's appraisal process has not ensured initial offers to property owners always reflected fair market value. This has occurred because subsequent appraisals often valued properties at much higher levels, negotiated prices were sometimes based on comparable sales not included in the original appraisal, and MoDOT appraisers had not always included items for which

the property owner should have been compensated. In addition, we found guidance had not been established for when second appraisals should be done prior to initial offers. We also found department appraisers had not received consistent feedback on the outcome of cases involving appraisals and some fee appraisers had not been evaluated in accordance with division policy.

Weaknesses existed in appraisal process

Considering over half of the property owners responding to our survey indicated they believed MoDOT's initial offer was less than fair market value, and the recent external peer review identified weaknesses in the appraisal process, we evaluated the process to determine the extent to which weaknesses existed. We analyzed a judgmental sample of 28 cases where either survey respondents or division data indicated potential problems, such as substantial differences between the original appraised value and the final purchase price. We also interviewed ROW officials from three districts regarding these cases, who confirmed the cases were typical acquisitions and the procedures followed were consistent with all of their acquisitions.

Our review of 28 properties disclosed weaknesses existed in the appraisal process for about half of those properties. For example, five properties had significant differences between initial appraisals and subsequent appraisals. For five other properties, comparable sales provided by the property owner, which were not considered in the initial appraisal and subsequent offer, affected the negotiated price of the properties. For three other properties, MoDOT determined the initial appraisals missed certain items which should have been included in the appraisal, or included items which MoDOT undervalued.

Examples of cases in which subsequent appraisals increased the appraised amount.

- For one property, the seller did not accept the initial offer, and during the condemnation process, the legal department had another appraisal prepared for the property. That appraiser valued the property at over 400 percent of the initial offer amount. The initial and subsequent appraisals varied significantly because the appraisers' opinion on the highest and best use (commercial versus residential) differed. Condemnation proceedings continue for this property as of January 2005.
- For another property, the initial appraiser valued the property at \$30,828. After the case went to condemnation, the legal department had a contracted (fee) appraisal prepared which valued the property at \$164,000. The appraisals differed because the second appraiser allowed a \$101,000 reduction in value to the building on the property because parking spaces had been reduced. The initial appraiser had not included

this reduction because she believed the applicable city would not enforce a zoning requirement which affected the parking lot. MoDOT ultimately settled with the property owner for \$300,000.

- For another property, the initial appraisal valued the property at \$20,750. After the case went to condemnation, the legal department had a second appraisal prepared which valued the property at \$83,500. The appraisals differed because the initial appraiser had not considered damages to the remaining property associated with a change in access to the highway. MoDOT ultimately settled with the property owner for \$109,198. The MoDOT attorney who handled the settlement said the change in access had been considered in the settlement amount.

Examples of cases in which the negotiated price of the property acquisitions had been affected by a comparable sale(s) provided by the property owner, which had not been considered in the initial appraisal and subsequent offer.

- For one property, MoDOT initially appraised and offered \$850,000 for a 95 acre parcel. MoDOT eventually settled with the property owners for \$1,255,488, based partly on a comparable sale not considered in the initial appraisal.
- For another property, MoDOT initially appraised and offered \$19,500. The property owners made a counter offer of \$21,000 based on a comparable sale they had identified. MoDOT decided to settle at the amount of the counter offer.

Examples of instances where MoDOT determined the initial appraisals missed certain items for which the property owner should have been compensated, or included items MoDOT undervalued.

- For one property, MoDOT offered the property owner \$12,350, based on the initial appraisal. During negotiations, MoDOT discovered the initial appraisal did not include the costs the property owner would have to incur to move a private road that had been affected by the project. MoDOT agreed to compensate the property owner an additional \$32,650 to reimburse him for these estimated costs.
- For another property, MoDOT agreed to pay the property owner an additional \$30,500 to cover the replacement of a landscape berm and trees. The appraiser had initially estimated that 60 trees would need to be replaced. However, the owner contended with relocation of the landscape berm, 180 trees would need to be replaced. The owner also contended the appraiser did not allow enough for the cost of the trees. The additional

amount reflected an increase in the estimated amount paid for trees lost which were not properly considered or estimated in the initial appraisal.

According to appraisers and negotiators, the appraisal process is subjective and appraised values on the same property often vary and sometimes by substantial amounts. Valuation differences can vary because (1) the appraisers' opinions of the highest and best use for the property may differ, (2) different comparable sales are used in preparing the appraisal, (3) certain non-land items (damages) might not be included in one of the appraisals.

Guidance needed on when to prepare a second appraisal

The MoDOT ROW division generally prepared one appraisal prior to making initial offers to property owners and obtained a second appraisal only when there had been a unique or complex situation, according to department officials. MoDOT had no written policy or procedure identifying situations when second appraisals had been needed. Further, division officials had not maintained records when second appraisals had been obtained. According to the ROW division director, prior to the early 1990s, the division had a policy requiring staff obtain a second appraisal for any parcel with an estimated value over \$50,000 or with a certain level of complexity, prior to the initial offer being made. However, the division director said he did not know why or when this policy changed.

An Iowa Department of Transportation official said his department requires a second appraisal for acquisitions in which the property is very complex, the highest and best use is different from the current use, or partial acquisitions in which the property has a special use or extensive damage. He estimated the department obtains second appraisals prior to initial offer in approximately 10 to 15 percent of acquisitions.

Appraisers not always getting adequate feedback

Department appraisers said they often had not been aware of the final outcome of acquisition cases they were involved with, any adjustments made on those cases, or problems encountered by negotiators. This situation occurred because MoDOT has not established procedures to effectively communicate problems noted in an appraisal, or a differing opinion, to the initial appraiser.

In addition, fee appraisers had not always been evaluated in accordance with MoDOT policy. Fee appraisers had been evaluated on two of ten (20 percent) appraisals reviewed. ROW division policy requires a fee appraiser's performance be evaluated after completion of all appraisal assignments in a given contract. The ROW division similarly noted that fee appraiser evaluations were not always prepared as required during its fiscal year 2001

district quality assurance review.⁸ However, no corrective action had been taken, as of August 2004.

Peer review suggested improvements to appraisal process

The recent external peer review of the MoDOT ROW program recommended several changes to the appraisal process. The peer review team suggested a major cultural shift in philosophy toward valuation and acquisition is needed by all ROW staff, and that MoDOT should look at its business practices, including appraisal, appraisal review, and acquisition in order to do as much as it can to reduce the number of cases turned over to the legal department for condemnation. The peer review team recommended a new approach in the appraisal of properties toward the "highest reasonable value that a parcel would receive if on the open market." In addition, it recommended that all MoDOT appraisers (staff appraisers and fee appraisers) use a consistent appraisal approach, to increase the quality of all appraisals. The peer review team reported that other states have had good results from this approach and had been successful in reducing cases going to condemnation.

Improvements in the appraisal process could reduce condemnation costs

A significant portion of the money MoDOT spends on the acquisition of ROW property relates to condemnation cases. While 48 of 200 cases (24 percent) we surveyed went to condemnation, these cases accounted for over half of the \$26.1 million ROW expenditures incurred on those cases through June 2004. Property owners whose property went to condemnation received, or have been awarded, as of June 2004, an average of 98 percent more than the initial offer.⁹

Most MoDOT employees and officials said the condemnation process is very costly to the state, both in high condemnation awards and legal costs. Several MoDOT officials said they believed condemnation proceedings usually result in MoDOT paying more than it should, and that once a case is in the condemnation process, fair market value of the property is no longer a consideration.

ROW officials recognize improvements needed

ROW division officials acknowledged improvements have been needed in the appraisal process and corrective action has been planned. For example, during MoDOT's fiscal year 2005 quality assurance review process, appraisals will be reviewed to determine where improvements can be made in the areas of highest and best use determination and comparable sales

⁸ This process involves independent reviews of processes handled by each district, conducted throughout the fiscal year.

⁹ Of the 48 cases where condemnation was filed, 12 were settled by the legal department at an average of 63 percent more than the initial offer; and 4 were settled through jury award, averaging 253 percent more than the initial offer. The remaining cases that were filed for condemnation were either pending at June 2004 or settled at the commission award amount.

analysis, according to the officials. In addition, MoDOT plans to hold training sessions in the future for staff and fee appraisers, with the focus on evaluating the highest and best use of the property and increasing fairness and consistency in appraisals.

Consistent Procedures Needed on Negotiation Limits

We found the three districts reviewed had inconsistent negotiation practices because MoDOT had not established limits on how much ROW staff could negotiate with property owners. Negotiations are handled in the districts by a ROW negotiator, subject to approval by the chief negotiator (in those districts where there is a chief negotiator) and the ROW manager. There are no limits on the amount the ROW manager can approve over the appraised amount, according to ROW division officials. In addition, most district ROW negotiators told us negotiators in their districts do not have established limits; but they have their own idea, based on experience, of what will be approved by the ROW manager. In one district, the chief negotiator told us negotiators have an informal limit of 15 percent or \$2,500, whichever is greater, with no established limits for the chief negotiator. The ROW division director said the leeway given to negotiators varies by district based on factors such as the individual negotiator's experience level, the particular project, and complexity of cases.

The Iowa Department of Transportation has a written policy requiring less experienced staff to obtain supervisory approval prior to entering into agreements for a value other than the appraised value. Experienced ROW staff can offer landowners up to ten percent more than the appraised amount, not to exceed \$2,500. In addition, if the ROW staff and the property owner cannot reach agreement, the official said the acquisition supervisor has authority to negotiate settlements up to \$10,000 over the appraised value, the ROW director has authority to approve settlements up to \$50,000 over the appraised value, and the department division director must approve all settlements exceeding \$50,000 over the appraised value.

Consistent Guidance Lacking in Determining When to Buy Unneeded Property

MoDOT has not established consistent policies outlining the decision-making process when property owners request MoDOT acquire remaining (economic) portions of property. Our review of 28 cases and interviews with ROW managers, appraisers and negotiators at three MoDOT districts disclosed differences in how the districts handle owner requests to buy unneeded parcels of property. For example, officials at two of the districts said they cannot, and generally will not, buy more property than is needed for a project. However, officials at the other district (the district handling the first two examples cited below) said they almost always acquire the property owner's entire property when such a request is made.

Federal regulations require MoDOT to acquire uneconomic remnants, which represent portions of properties not needed for the project having little or no

value, or utility, to the owner.¹⁰ Federal regulations also give MoDOT the authority to make this determination. However, federal regulations do not require MoDOT to purchase remaining (economic) portions of property when they have value or utility to the owner. ROW division officials said district procedures relating to these requests likely vary, and the districts should review such requests and try to accommodate the property owner if that individual has a valid reason for making the request.

The following acquisitions represent examples where MoDOT agreed to purchase some remaining property from the owners even though the appraiser had not considered the remaining property an uneconomic remnant.

- MoDOT needed 6.5 acres, which included the property owners' house, for a project but bought the property owners' remaining 35.5 acres. According to the negotiator's report, the property owners requested MoDOT buy the entire property, involving 42 acres, because they did not want to be there during the construction process and they no longer wanted to live on the property. The property owners were paid an additional \$53,000 for the unneeded 35.5 acres.
- MoDOT agreed to buy an additional 10.6 acres of commercial property not needed for the project through a joint purchase with the city of Springfield. MoDOT and the city paid \$2,298,900 for the additional property. According to the negotiator's report and the district ROW manager, the property owner's attorney told MoDOT during negotiations the remaining 10.6 acres would be of no value to the property owner after the acquisition of the property being targeted for acquisition. The attorney said the property owner had been ready to proceed to condemnation proceedings if MoDOT had not been willing to acquire the entire property.
- MoDOT needed a 7,700 square foot strip of property. However, it purchased the entire property, including the house, after the owners claimed they would be adversely affected. Three ROW employees in the St. Louis district said this purchase had been contrary to the district's general practice; however, they said the project manager had given the property owners the option of MoDOT acquiring the entire property (38,000 square feet of land plus the house) or only the portion needed. The original offer for the land needed plus damages to the remaining

¹⁰ Uneconomic remnants are typically parcels that are too small to use as a stand alone property, or parcels in which the property owner no longer has access.

property totaled \$79,000. However, MoDOT ultimately paid the property owners \$358,500. While MoDOT subsequently sold the house and remaining property to other individuals for \$242,500, it incurred additional expenditures by purchasing the entire property, including \$8,770 in relocation expenses and \$15,450 in realtor commissions and closing costs to sell the property. The district ROW manager said despite these additional costs, she believed had MoDOT not acquired the entire property, the case would have gone to condemnation.

Guidance Needed for Purchase of Future ROW Properties

MoDOT has not established guidelines limiting or restricting purchases of ROW property for projects it did not plan to begin constructing within its 5-year planning cycle. We identified 7,939 acres of future ROW property for projects not included on MoDOT's current 5-year plan (i.e., construction for the related projects had not been funded). Table 2.1 shows MoDOT has owned 3,485 of 7,939 (44 percent) acres of future ROW property for 25 years or more.

Table 2.1: Future ROW Property Acquired With No Construction Planned

Date acquired ¹	Number of projects	Number of acres
1920s	1	1
1930s	1	45
1940s	2	14
1950s	4	199
1960s	16	867
1970s	45	2,359
1980s	8	432
1990s	47	3,578
2000 - Present	15	444
Total	139	7,939

¹ Projects and related acres listed in the year MoDOT began acquiring ROW property.

Source: SAO computation based on MoDOT (Controller's Office, ROW division and district) records.

Examples of future ROW acquisitions in recent years with uncertain construction timing include:

- MoDOT began purchasing ROW properties for two Camden County Route 54 projects (a Route 54 bypass in Osage Beach) in 1991 and continues to acquire property for these projects. MoDOT personnel estimated most of the properties have been acquired for the two projects at a total estimated cost of \$24 million. The draft 2005-2009 plan estimates MoDOT will spend another \$6.7 million on ROW property related to these projects during fiscal years 2005 and 2006. Although MoDOT officials do not know when construction will begin on these projects, they estimate the construction costs will total \$21.9 million and

\$36.6 million, respectively. MoDOT officials said the advanced purchase of ROW property for these projects was advantageous because the properties are located in areas of developmental growth and property values are significantly lower than they will be at the time the property is needed.

- MoDOT spent approximately \$5.4 million from 1997 through 2003 to acquire 618 acres of property related to a project to construct a Route 63 bypass around the city of Kirksville in Adair County. Most of the property was acquired in fiscal years 2000 and 2001. The district ROW manager said this project was included on a short term action plan used by MoDOT during the period 1996 through 1998. This project was budgeted for only ROW acquisitions and not construction. The purpose was to accelerate new projects by having the property acquired so that projects were ready to advance to construction once funding became available. However, district officials said funding to construct the project had not become available and MoDOT did not know when the project will be constructed.
- MoDOT spent \$483,000 between 1999 and 2001 on a project to replace substandard curves and pavement on Route 32 in Cedar County. Although MoDOT has acquired all ROW property needed for this project (61 acres), a district official said MoDOT did not know when the project would be constructed because funding is not currently available for it. That official said at the time the ROW was purchased, funding was available to buy the ROW but not to construct the project. While the district had anticipated construction funding would become available once the property was acquired, this did not occur.
- In November 2001, MoDOT purchased 46 acres of land and 7 acres of permanent easement for \$2,273,750, from the Missouri Department of Conservation related to highway projects in St. Charles County. MoDOT officials said 19 of the 46 acres acquired were not needed for the current project, but for future projects. MoDOT paid approximately \$855,000 for the future ROW portion of this tract of land. Since this property was owned by another state agency and being used as a conservation area, it is unlikely it would have been developed prior to the time MoDOT might need the property. Even though MoDOT could have acquired the property later if needed, MoDOT officials said they purchased the additional acreage at the request of conservation officials.

MoDOT officials said future ROW property is typically acquired either for a new road or section of road to be built in the future, or for the future addition of new lanes or interchanges to an existing road. They said property can be acquired at a cheaper price than in the future, especially in areas of

development. In addition, they said costs can be saved, and property owner satisfaction levels maintained, when they acquire future ROW property from a property owner (i.e., for an additional future lane or interchange) at the same time they acquire the property currently needed for a project.

In August 2004, we discussed concerns in this area with a MoDOT planning division official. The official told us MoDOT plans to revise planning policies regarding ROW acquisitions, which will include guidelines regarding the acquisition of future ROW property. The official anticipates the revision will not permit ROW property to be acquired unless there is construction funding on MoDOT's 5-year plan.

Future ROW impacts property owners

Property owners who either responded to our survey, or contacted us, said they have been financially burdened due to their properties and others in their areas being targeted for advanced acquisition related to a future project. Property owners described scenarios in which they were unable to market and sell properties for periods in excess of ten years because of known future ROW projects.

ROW Property Acquisition Database Could be More Useful

As currently maintained, the ROW division's property database records contained in the Parcel Acquisition System¹¹ cannot be used as intended. According to ROW division officials, the Parcel Acquisition System records are important to the division because those records allow division personnel to analyze ROW acquisitions. For example, first offers to final payments, case loads of appraisers and negotiators, condemnation results, and jury trial results could be analyzed, according to ROW division officials. However, the division has not required the districts to fully utilize the ROW property database records nor clarified whether the division or the districts are responsible for entering various types of information into the system.

Audit tests disclosed 20 of the 28 acquisitions (72 percent) reviewed had inaccurate and incomplete data in the system, and 6 instances in which parcel acquisitions had not been recorded in the system. ROW division officials said system data has not been complete because some districts had not fully utilized it. They stated when data has not been entered in the system, analyses cannot be done. District personnel confirmed they have not fully utilized the system. For example, the ROW manager in one district said district personnel had not recorded information in this system because of time constraints, the system was not user-friendly, it had not provided useful information, and reports could not be printed. Officials at another

¹¹ Division officials said information in the Parcel Acquisition System will likely be interfaced with the new planned comprehensive database of department-owned property. See introduction section regarding the planned comprehensive database.

district told us they had not input all required information in the database because they did not believe the information to be useful or needed, and/or they had not been sure whether they (versus the division) had been responsible for adding information to the system.

Conclusions

Approximately half of surveyed property owners reported concerns with MoDOT's ROW acquisition process and felt they had not been treated fairly and their input on the acquisition and project design had not been considered. Property owners' perception of their treatment is important in their willingness to negotiate and settle, and avoid condemnation proceedings. Improving communications with property owners would help owners' perceptions of the acquisition process.

MoDOT's appraisal process has not ensured initial appraisals always reflected fair market value. Subsequent appraisals often valued property at a higher level, comparable sales were not always adequately identified and considered in the appraisals, and MoDOT appraisers had not always included items for which the property owner should have been compensated. In addition, guidance had not been established for when second appraisals should be prepared prior to initial offers. Specific guidelines when to obtain second appraisals would also help support initial offers and could be beneficial in the negotiation process. Department appraisers also had not received feedback on the outcome of cases involving appraisals and fee appraisers had not been evaluated in accordance with division policy. We believe providing appraisers feedback and evaluating fee appraisers should be done and would help ensure fair and reasonable appraisals. Enhancing the appraisal process may also help reduce the number of cases going to condemnation.

MoDOT's negotiation procedures have been inconsistent because MoDOT had not established limits on how much ROW staff could negotiate with property owners. Establishing limits would help ensure consistency among districts. MoDOT also has not established (1) policies and procedures to evaluate owner requests to purchase entire parcels when only a portion is actually needed, and (2) guidelines limiting or restricting the purchase of future ROW property on projects where the timing of construction is uncertain. Establishing guidance in these areas would help ensure MoDOT uses current funding as effectively as possible and does not purchase unnecessary parcels of property. In addition, the ROW manual is out-of-date and incomplete, making it less useful for staff, and ROW acquisition records are not useful because they contain inaccurate and unreliable information, and are not used by all districts.

Recommendations

We recommend the Director of MoDOT:

- 2.1 Improve communications with property owners through a review of current communication methods.
- 2.2 Ensure the ROW policies and procedures manual is complete and updated to include the following:
 - standard procedures for appraisals, including when second appraisals should be obtained, and better assurance offers are as accurate and reflective of fair market value as possible,
 - procedures to ensure appraisers receive feedback regarding problems or deficiencies in appraisals prepared, and fee appraiser evaluations are prepared, as required by policy,
 - formal limits on the amounts that can be negotiated by the negotiators, chief negotiators, and ROW managers above appraisal amounts, and
 - the decision-making process to be used in determining when to buy economic portions of property from owners.
- 2.3 Ensure guidelines are established limiting or restricting the purchase of ROW property for projects not included on MoDOT's 5-year plan and where the timing of construction is uncertain.
- 2.4 Require the districts to fully utilize the Parcel Acquisition System and any replacement of this system to ensure a complete record of MoDOT ROW acquisitions is maintained. Guidance should be provided to clarify whether the division or the districts are responsible for entering the various types of information into the system. In addition, steps should be taken to ensure data is accurate and reliable.

Agency Comments

MoDOT's comments are included in Appendix II.

Improvements Needed in the Leasing of ROW Property

MoDOT has not ensured (1) ROW property leased for nominal amounts has been properly supported, (2) future ROW properties are always evaluated for leasing potential, (3) leasing policies and requirements have been followed. In addition, MoDOT has not ensured districts maintain complete and accurate property management records. As a result, MoDOT cannot be assured it has maximized potential revenue from leased ROW property.

Property Leased at Nominal Amounts Not Adequately Supported

According to MoDOT records, MoDOT had executed 234 leases to property owners, as of October 1, 2003. Of the 234 leases, MoDOT received rent of nominal amounts (\$20 per year or less) on 105¹² (45 percent) of those leases. ROW policy requires the rate of compensation for leased property be based on a rental study, or an appraisal, to determine fair market rent, except in certain situations.¹³

No-cost/minimal leases not always adequately justified

About half (25) of the 53 sampled leases represented properties leased at nominal amounts. Our review of nominal cost leases disclosed that 14 nominal leases reviewed had not been adequately justified.¹⁴ Only 1 of the nominal leases reviewed involved a valid exception. We found 13 of the 14 leases had been executed with the previous owners at no cost or \$1. MoDOT had not prepared rental studies to determine fair market rent for the 13 leases, and district and division lease records did not contain adequate documentation justifying the lack of compensation received related to these leases. District and division officials said they agreed to these leases during negotiations to acquire the properties. Those officials said such leases may be the result of a settlement with the property owner to acquire his or her property, and documentation of the settlement should explain the justification for waiving the lease compensation policy.

The practice of allowing no-cost/minimal leases as part of the negotiation process had not been established in formal ROW policy/procedures. In addition, while ROW acquisition records for most of these properties did mention the lease of the property, there was no documentation the lease had been part of the settlement or affected the acquisition price paid by MoDOT. The total appraised value of the applicable 13 properties was \$1,225,000 and the total amount MoDOT paid for these properties was \$1,692,000.

¹² Of the 105 leases, 96 had been negotiated at no-cost or \$1.

¹³ The exceptions are (1) the area is for a utility use or occupancy under 23 CFR 645, Subpart B, (2) the area use is part of a highway or transit project under Chapter 1 of Title 23 USC, (3) the area is used for governmental purposes and, under state law, the state or state highway agency cannot charge another agency or political subdivision for such use and no income is generated, or (4) the use is governmental but non-proprietary.

¹⁴ We evaluated 15 of the 25 nominal cost leases.

In the other property, MoDOT agreed to lease some ROW property to an adjoining property owner to extend his backyard. During lease negotiations, MoDOT officials failed to discuss rental cost with the property owner until they notified him of their decision to lease the property, according to lease file documents. District officials decided to lease the property to the individual at no cost because "it would look bad for us to come to them out of the blue asking for money." MoDOT executed the lease in 1994 and it will stay in effect as long as the lessees own and occupy their residence.

No-cost/minimal leases done to avoid public concern, condemnation, and save cost of maintaining properties

We found 8 of the 13 leased properties had been acquired by MoDOT between March 1999 and April 2001, and related to two future projects in Adair and Cedar counties. District and division officials said there had been a large amount of public concern expressed during the acquisition of ROW property on the Cedar County project and officials decided to lease the properties to the property owners at no charge until needed for construction. A district official said a number of property owners affected by the Adair County project requested they be allowed to lease their properties at no cost until MoDOT was ready to start construction on the applicable project. The official said MoDOT decided to grant these requests in order to avoid condemnation, and/or save the costs of maintaining and mowing the properties. For one of these leases, legal settlement documents showed a fair rental value of at least \$27,000 annually for the property.

None of the 14 leases discussed above represented valid exceptions to ROW policy or had a rental study prepared.

Fair market rent received for some properties leased to previous owners

In contrast to the 13 leases discussed above, we found MoDOT had leased properties to the original property owners and received fair market rent for 6 of the 53 leases sampled. Three of the leases had been established during the acquisition process, and three were leased to the property owner several years after MoDOT acquired the property. MoDOT had leased these properties from 2 to 23 years and received a total of \$33,500 per year in rental income from these leases for 2003. MoDOT personnel had documented these leases with rental studies or appraisals, in accordance with formal ROW policy.

Future ROW Properties Not Always Evaluated for Leasing Potential

During our evaluation of property management practices, we selected 63 excess and future ROW properties for review. Of the 50 excess ROW properties reviewed, 27 represented properties that the department should have more actively marketed for sale as recommended in our previous report.¹⁵ The remaining excess properties had either been sold or adequately

¹⁵ Review of Department of Transportation's Excess and Future Right-Of-Way Property (Report no. 2004-36, May 7, 2004).

marketed for sale, or were not actually excess ROW properties. Of the 13 future ROW properties selected for review, MoDOT personnel had not determined whether 11 properties could be leased until needed for construction.

MoDOT had owned 500 acres associated with the 11 properties from 5 to 40 years. District officials said there are some possible restrictions to leasing portions of some of these properties (access, topography, and shape). However, these properties had not been evaluated to determine whether or not the properties could be leased. They also said all of these properties involved land without buildings or other structures.

Officials at three districts said they had not actively marketed future ROW properties for lease because of (1) administrative costs to process the lease application, (2) little or no interest in leasing some properties because of accessibility issues, (3) increased liability to the department, and (4) upkeep costs of properties with improvements.

Leasing Policies and Requirements Not Always Followed

MoDOT staff had not always followed ROW property leasing policies and requirements. For example:

- Districts had not ensured lessees had maintained liability insurance on leased property as required. Districts could not provide documentation of current insurance held by the lessee for 6 (20 percent) of 30 leases reviewed. While evidence existed insurance had been maintained related to all of these leases in the past, the insurance had expired from 2 to 17 months prior to our review. The districts had made inquiries regarding current insurance for two of these leases approximately 6 months prior to our review, but the lessees had not responded to the inquiries. All lease agreements require the lessee to maintain liability insurance, and ROW policy requires the districts to ensure compliance by obtaining a copy of the current insurance binder each year.
- Districts had not performed and documented required annual physical inspections of leased properties for 16 (53 percent) of 30 lease files reviewed. ROW policy requires district personnel visually inspect leased properties at least once a year to ensure compliance with the terms of the lease, and to maintain written documentation of the inspection. Documentation showed 6 of these properties in one district had not been inspected since June 2001. Officials at another district said they periodically inspect properties, but did not always prepare documentation of the inspections.
- The districts had not sent all required lease documentation to the division. The ROW division had responsibility for approving and executing all

lease agreements, but division files did not always contain a summary of the district review and recommendation of lease agreement conditions (6 of 30 test items), a completed copy of the MoDOT property inventory record (7 of 31 test items), a copy of the plan sheet of the area (3 of 31 items), and/or a copy of the application for lease (7 of 20 items). ROW policy requires these documents be transmitted to the ROW division to be reviewed prior to approval of a lease. Division officials could not explain why this information had not been located in lease files.

- Ten (43 percent) of 23 leases of interstate property reviewed had not been sent to the Federal Highway Administration for approval, as required. ROW policy, as well as federal regulation,¹⁶ requires that leased property located on interstate routes be reviewed and approved by the Federal Highway Administration prior to execution. Many of these leases had been initiated prior to April 2001, when MoDOT placed the requirement in the policy manual. Officials from four districts said they had not been aware of the federal requirement until MoDOT established the policy and/or they believed federal approval had not been required on projects that had not yet been constructed. ROW policy did not provide specific guidance to assist district and division staff in determining when Federal Highway Administration approval would be necessary.

The fiscal year 2001 quality assurance review process also found numerous instances of non-compliance with ROW property management policies, including not properly documenting annual inspections of leased properties, and failure to ensure liability insurance had been in force for leased properties.

Property Management Records Inadequate or Incomplete

Records relating to improvements acquired and leases had not always been complete, and in some cases, records had not been maintained. ROW policy requires districts maintain complete records of all improvements (houses, outbuildings, other structures), acquired on ROW property and the details regarding the ultimate disposition of each improvement. Complete improvement inventory records had not been maintained by the districts. For example, officials at one district said they had not maintained these records because they encountered difficulties in gathering the information needed when they began preparing the records in fiscal year 2001. Another district maintained these inventory records; however, we found the records had not listed all improvements acquired, and some disposition information had not been recorded. The district employee responsible for the records said she relied on various employees to notify her when improvements had been acquired and disposed of, but she had not always been notified when these

¹⁶ 23 CFR 771.117(d)

actions occurred. The fiscal year 2001 quality assurance review process also reported districts had not maintained adequate records of improvements.

ROW personnel had not maintained complete and accurate lease information on a database system. For example, for 11 (35 percent) of 31 leases reviewed, we noted certain required fields on the system were either incorrect or not completed. In most cases, the incorrect or incomplete field had been the property classification (i.e., excess ROW, pre-construction ROW, current ROW, etc.). Further review of these errors disclosed the classification changed sometime after the lease had been established. However, MoDOT staff had not updated the classification on the system. MoDOT officials said procedures had not been established to ensure database information is accurate and up-to-date.

Conclusions

MoDOT personnel have not adequately supported decisions to lease ROW property for nominal amounts. Personnel have not always followed ROW guidance requiring lease rates to be based on rental studies, or appraisals, to determine fair market rent. ROW personnel have provided nominal cost leases as part of negotiations to buy ROW property, and to avoid public concerns, condemnation proceedings, and save the cost of maintaining properties. However, MoDOT has not established procedures ROW personnel can follow in determining when it is advantageous for MoDOT to provide nominal lease rates. By not establishing ROW guidance in this area, MoDOT has no assurance nominal cost leases are advantageous to MoDOT, or represent fair market value.

MoDOT also has not always evaluated future ROW properties for leasing potential. ROW officials cited administrative costs, little interest in the property, increased liability to MoDOT, and upkeep costs of properties with improvements as impediments to actively marketing future ROW property for lease. We believe MoDOT should establish procedures to determine when it is cost-effective to lease ROW property and ensure all future ROW property is assessed for potential leasing.

MoDOT has not always followed leasing policies and procedures. Districts have not (1) ensured lessees have maintained liability insurance on leased property, (2) performed and documented required annual physical inspections of all leased properties, (3) sent all required lease documentation to the division, and (4) always sent leases to the Federal Highway Administration for approval, as required. By not following leasing policies and procedures, MoDOT has potentially increased its liability as owner of properties and cannot be assured properties and improvements are in good condition. In addition, MoDOT staff has not maintained complete property management records and lacked procedures to ensure those records are accurate.

Recommendations

We recommend the Director of MoDOT:

- 3.1 Follow established guidance requiring rental studies or appraisals in determining fair and reasonable lease rates, and ensure appropriate documentation is retained.
- 3.2 Establish procedures requiring all future ROW property be evaluated to determine the feasibility of leasing the property, and actively market properties identified.
- 3.3 Ensure ROW property improvement inventory and lease records are complete and maintained as required.

Agency Comments

MoDOT's comments are included in Appendix II.

Right-Of-Way Property Owner Questionnaire Results



Missouri State Auditor's Office

Right-Of-Way Property Owner Questionnaire

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Introduction

The Missouri State Auditor's Office (SAO), an audit agency independent of the Missouri Department of Transportation (MoDOT), is conducting a review of MoDOT's right-of-way program.

We are surveying property owners who have had land and other property acquired by MoDOT to obtain input on the right-of-way acquisition process, and how the property owners feel they were treated during the process. To help gather this information, we are sending a survey to a sample of property owners who had property acquired by MoDOT for right-of-way purposes.

We understand that you may have previously received and responded to a survey(s) from MoDOT regarding the acquisition of your property. We realize that your time is valuable, but this questionnaire should only take about 20-30 minutes to complete. Your response to this questionnaire will help us gain an understanding of the effectiveness of the right-of-way acquisition process and property owners' ideas and opinions.

We ask that you respond to each question and provide the information requested as best you can. It is not our expectation or

intent that you should need to consult with an attorney or other paid professional in order to complete this survey.

This questionnaire is confidential, and the SAO will safeguard the privacy of your responses. They will be combined with those of other respondents and will be reported only in summary form. The control number at the top is included only to aid us in our follow-up efforts.

If you have any questions concerning any part of this survey, please call Kim Spraggs or Anne Jenkins at (573)751-4213. E-mail requests or comments can be sent to SAOROW@auditor.state.mo.us.

Please return the completed questionnaire in the enclosed pre-addressed envelope within 2 weeks to:

Missouri State Auditor's Office
ATTN: Kim Spraggs
PO Box 869
Jefferson City, MO 65102

Thank you for your assistance.

Appendix I Right-Of-Way Property Owner Questionnaire Results

Please check the response(s) that seem most appropriate to the following questions. Please write any comments in the space provided at the end.

I. Background Information

1. What type of property did the Missouri Department of Transportation (MoDOT) acquire from you? *Check all that apply.* N¹⁷=124

- 18 House
- 106 Land
- 10 Outbuildings (not including a house)
- 15 Business
- 10 Other (please describe) _____

II. Opinions About the Right-of-Way Acquisition Process¹⁸

2. To what extent, if at all, did MoDOT's right-of-way representative(s) explain why your property was needed (i.e. the project design) and how the project would affect your remaining property? *Check one box in each row.*

	Very great extent (1)	Great extent (2)	Moderate extent (3)	Little extent (4)	No extent (5)	Don't know (6)
a. Why your property was needed N=122	18%	42%	25%	13%	0%	2%
b. How the project would affect your remaining property N=117	13%	24%	28%	17%	15%	3%

3. To what extent, if at all, do you feel that your input was considered during the project design development and right-of-way acquisition processes? *Check one box in each row.*

	Very great extent (1)	Great extent (2)	Moderate extent (3)	Little extent (4)	No extent (5)	Don't know (6)
a. Project design development process N=119	6%	13%	19%	17%	39%	7%
b. Right-of-way acquisition process N=119	9%	16%	25%	24%	23%	3%

4. In your opinion, to what extent, if at all, did MoDOT's right-of-way representative(s) explain the options available to you if you rejected MoDOT's initial offer for your property? *Check one box in each row.*

Options	Very great extent (1)	Great extent (2)	Moderate extent (3)	Little extent (4)	No extent (5)	Don't know (6)
a. Negotiation N=122	10%	25%	40%	10%	13%	2%
b. Mediation N=111	7%	23%	37%	19%	13%	2%
c. Condemnation N=109	9%	24%	31%	21%	13%	2%

Appendix I Right-Of-Way Property Owner Questionnaire Results

5. Which of the following best describes your feelings about the initial offer MoDOT made for your property? *Check one box.* N=120

1% It was substantially more than fair market value
 8% It was slightly more than fair market value
 32% It was equal to fair market value
 17% It was slightly less than fair market value
 38% It was substantially less than fair market value
 5% Don't know

6. In your opinion, to what extent, if at all, did MoDOT's right-of-way representative(s) explain how the value of the property acquired was determined? *Check one box.* N=123

7% Very great extent
 24% Great extent
 45% Moderate extent
 15% Little extent
 7% No extent
 4% Don't know

7. Other than the MoDOT offer letter, did MoDOT's right-of-way representative(s) provide you with the following documentation regarding the valuation of your property? If you did not receive the documentation, did you request a copy? *Check at least one box in each row. If you answer "No" to the first part, then answer the second part of the question. If you answer "Yes" to the first part, go to the next line.*

	Did you receive the following?	If no, did you ask for a copy?		
		Yes (1)	No (2)	Don't know (3)
a. Appraisal report(s) or payment estimate providing details of how the value of your property was determined * N=120	62% ¹⁹ Yes 28% No → ----- 11% Don't know	36% N=28	54%	11%
b. "Basis for Just Compensation Pursuant to Offer of Settlement", a document which provides comparable sales data, but not details of how the value of your property was determined N=107	57% Yes 27% ²⁰ No → ----- 16% Don't know	27% N=26	69%	4%

* Appraisals are typically prepared for acquisitions valued at more than \$10,000 and payment estimates are typically prepared for acquisitions valued at \$10,000 or less.

8. In your opinion, to what extent, if at all, do you feel that the valuation process (i.e. appraisal(s) or payment estimate) of your property was complete (included all aspects of your property and addressed all project impacts on your property) and prepared in an objective manner? *Check one box in each row.*

	Very great extent (1)	Great extent (2)	Moderate extent (3)	Little extent (4)	No extent (5)	Don't know (6)
a. Complete N=120	8%	34%	31%	14%	8%	5%
b. Prepared in an objective manner N=112	6%	36%	24%	18%	9%	7%

9. If you were not given a copy of the appraisal report(s) or payment estimate, to what extent, if at all, do you feel that the "Basis for Just Compensation Pursuant to Offer of Settlement" was sufficient to help you understand how the value of your property was determined? *Check one box.* N=112

1% Very great extent
 17% Great extent
 31% Moderate extent
 12% Little extent
 4% No extent
 8% Don't know
 27% Not Applicable, I was not given a copy of the "Basis for Just Compensation Pursuant to Offer of Settlement", or I was given a copy of the appraisal report(s) or payment estimate

Appendix I Right-Of-Way Property Owner Questionnaire Results

10. To what extent, if at all, do you feel that the comparable property sales information, listed in the "Basis for Just Compensation Pursuant to Offer of Settlement", was appropriate for the valuation of your property? *Check one box.* N=123

0% Very great extent
17% Great extent
33% Moderate extent
18% Little extent
9% No extent
9% Don't know
14% Not Applicable, I was not given a copy of the "Basis for Just Compensation Pursuant to Offer of Settlement"

11. How satisfied or dissatisfied were you with the amount of time you were given to consider the offer before you had to make a decision? *Check one box.* N=124

24% Very satisfied
39% Generally satisfied
25% Neither satisfied nor dissatisfied
6% Generally dissatisfied
6% Very dissatisfied
1% Don't know

12. How was the price of your property ultimately determined? *Check one box.* N=124

31% I accepted MoDOT's initial offer
45% I negotiated a price with MoDOT
15% The price was negotiated through a third-party mediation process
8% The price was determined through the condemnation process
1% Don't know

13. Which of the following best describes your feelings about the final price you received for your property? *Check one box.* N=120

1% It was substantially more than fair market value
11% It was slightly more than fair market value
48% It was equal to fair market value
23% It was slightly less than fair market value
14% It was substantially less than fair market value
4% Don't know

14. If you did not accept MoDOT's initial offer and were unsuccessful in negotiating a price with MoDOT, were you offered a third-party mediation process? N=106

23% Yes
9% No
6% Don't know
62% Not Applicable, I either accepted MoDOT's initial offer or negotiated a price with MoDOT for my property

15. If MoDOT acquired your property through the condemnation process, to what extent, if at all, do you believe the process was fair? *Check one box.* N=102

2% Very fair
8% Generally fair
4% Neither fair nor unfair
1% Generally unfair → See follow up question below
3% Very unfair → See follow up question below
4% Don't know
78% Not Applicable, my property was not acquired through the condemnation process

If you feel the condemnation process is unfair, please explain the aspects of the process that you feel are unfair or would like to see changed.

Appendix I Right-Of-Way Property Owner Questionnaire Results

16. In your opinion, to what extent, if at all, do you feel that all of the property acquired from you was needed by MoDOT, and used in a timely manner? *Check one box in each row.*

	Very great extent (1)	Great extent (2)	Moderate extent (3)	Little extent (4)	No extent (5)	Don't know (6)
a. MoDOT needed all of the property N=115	17%	32%	23%	9%	8%	11%
b. MoDOT used the property in a timely manner N=107	11%	23%	19%	12%	11%	23%

17. How satisfied or dissatisfied were you with MoDOT's right-of-way representative(s)'s explanation of your relocation benefits? *Check one box.* N=115

17% Very satisfied
 17% Generally satisfied
 6% Neither satisfied nor dissatisfied
 1% Generally dissatisfied
 7% Very dissatisfied
 1% Don't know
 52% Not Applicable, I was not eligible for relocation benefits

18. If you needed to move, to what extent, if at all, do you believe you were adequately compensated for your relocation expenses? *Check one box.* N=104

2% I received substantially more than I expected
 4% I received slightly more than I expected
 13% I received the amount I expected
 2% I received slightly less than I expected
 3% I received substantially less than I expected
 0% Don't know
 76% Not Applicable, I was not eligible for relocation benefits

19. To what extent, if at all, do you believe MoDOT fulfilled all commitments made to you either formally or informally by the right-of-way representative(s)? *Check one box in each row. If any commitments were not fulfilled, answer follow up question.*

	All commitments fulfilled (1)	Most commitments fulfilled (2)	About half of the commitments fulfilled (3)	Some commitments fulfilled (4)	No commitments fulfilled (5)	Don't know (6)
a. Formal N=107	55%	25%	1%	7%	1%	11%
b. Informal N=92	47%	23%	5%	5%	4%	15%

If you feel that MoDOT did not fulfill all of its commitments made to you by the right-of-way representative(s), please explain the commitments you feel were not fulfilled.

**Appendix I
Right-Of-Way Property Owner Questionnaire Results**

20. Did you incur any of the following costs (in your time or in dollars) as a result of MoDOT's acquisition of your property? If yes, indicate to what extent you feel you were unduly burdened by these costs. *Check at least one box in each row. If you answer "Yes" to the first part, then answer the second part of the question. If you answer "No" to the first part, go to the next line.*

	Did you incur the following cost?	If yes, to what extent were you unduly burdened by the cost?					
		Very great extent (1)	Great extent (2)	Moderate extent (3)	Little extent (4)	No extent (5)	Don't know (6)
a. My time N=110	68% Yes → 32% No	16% N=75	20%	33%	23%	7%	1%
b. Attorney services N=105	37% Yes → 63% No	21% N=38	16%	24%	21%	16%	3%
c. Accounting services N=96	25% Yes → 75% No	8% N=24	8%	21%	38%	21%	4%
d. Appraisal services N=101	28% Yes → 72% No	12% N=26	23%	27%	12%	27%	0%
e. Other - (Specify ²¹) N=43	21% Yes → 79% No	56% N=9	11%	11%	0%	22%	0%

21. Taking everything into consideration regarding MoDOT's acquisition of your property, how would you rate the overall fairness of the following processes? *Check one box in each row.*

	Very fair (1)	Generally fair (2)	Neither fair nor unfair (3)	Generally unfair (4)	Very unfair (5)	Don't know (6)
a. The eminent domain process N=97	22%	30%	13%	10%	9%	15%
b. The right-of-way acquisition process N=116	25%	32%	14%	15%	10%	4%

22. This questionnaire was completed by: *Check one box.* N=121

- 86% Property owner
- 4% Relative of the property owner
- 2% Paid professional (i.e. attorney, accountant, etc.)
- 7% Other → Please indicate relationship to the property owner. _____

Appendix I
Right-Of-Way Property Owner Questionnaire Results

23. Please use the space below to provide any comments you would like to make regarding the acquisition of your property by MoDOT or to make suggestions on how to improve the right-of-way acquisition process. If your comments relate to a specific question in the survey, please indicate which question(s) they relate to. You may attach additional sheets if necessary. If you prefer, you may e-mail additional comments to SAOROW@auditor.state.mo.us.

¹⁷ N is the number of respondents for each question.

¹⁸ Due to rounding of the survey response percentages, total responses to each question may not equal 100 percent.

¹⁹ Since MoDOT's practice was not to provide property owners with a copy of the appraisal, and 62 percent of the respondents answered they did receive a copy of the appraisal or payment estimate (60 of the 74 respondents who responded this way had appraisals prepared for their property while 14 had payment estimates prepared for their property), we contacted 10 percent of those respondents for which an appraisal was prepared for their property. All respondents said they had not received a copy of the appraisal, but they had received the "Basis for Just Compensation Pursuant to Offer of Settlement" instead. Therefore, it is likely most, if not all, of the property owners, who said they received a copy of the appraisal, did not actually receive a copy of it.

²⁰ Since MoDOT officials said they almost always provide property owners with a copy of the "Basis for Just Compensation Pursuant to Offer of Settlement", and 27 percent of the respondents answered they did not receive a copy of this document, we contacted 10 percent of those respondents. All respondents said they had received the "Basis for Just Compensation Pursuant to Offer of Settlement". Therefore, it is likely most, if not all, of the property owners, who said they did not receive this document, did actually receive it.

²¹ Respondents indicated they incurred the following other costs: inventory loss, travel expenses, subcontractors not staying within ROW boundaries, bridge loan payments, stress/mental anguish, historic tree specialist arborist fees, and real estate taxes.

Agency Comments

Missouri
Department
of Transportation



Pete K. Rahn, Director

105 West Capitol Avenue
P.O. Box 270
Jefferson City, MO 65102
(573) 751-2551
Fax (573) 751-8555
www.modot.org

February 17, 2005

Mr. Kirk Boyer
Director of Performance Audits
Truman State Office Building
Room 880
Jefferson City, MO 65101

Dear Mr. Boyer:

Please accept the following as the Missouri Department of Transportation's response to your Acquisition and Management of Right of Way Property audit report. In regard to your first finding, regarding improvements to the property acquisition process, our response is as follows:

We would like to thank you for the information provided in your report. MoDOT appreciates any suggestions that can help us do a better job for the taxpayers of the State of Missouri. The acquisition of private property for public use (right of way) is necessary and taken very seriously by MoDOT as we deliver the Statewide Transportation Improvement Program.

To the extent your judgmental sample of 28 acquisitions is representative of the approximately 2,100 parcels acquired during the two years ended June 30, 2003, we will use your suggestions to further improve MoDOT's acquisition process. We presently acquire 85 percent of all parcels through negotiation and our customer surveys rate us at 4.6 on a 5-point scale (with 5 being the highest rating) after the acquisition process is complete. Regarding the specific recommendations, we plan the following:

- 2.1 The 28 acquisitions reviewed occurred between July 2001 and June 2003. In April 2003, we implemented project scoping procedures that require all projects to have public involvement before they are added to the STIP. In June 2004, we began providing copies of appraisals to property owners. We believe these two significant steps will do much to enhance communications with property owners.
- 2.2 A revision of the ROW manual is under way. We will add guidance on situations where second appraisals prior to the initial offer may be appropriate. We are also working with staff appraisers to improve appraisal quality. As appropriate, we will incorporate guidance in the ROW manual.

Regarding fee appraiser evaluations, we will include this item in future Quality Assurance reviews to determine the extent of the problem and will continue to emphasize to district personnel the importance of this step.

We disagree that it is appropriate to establish rigid dollar limits on the amounts that can be negotiated by ROW employees in various job titles. The ROW managers have sufficient

Our mission is to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri.

Appendix II
Agency Comments

Mr. Kirk Boyer
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experience to make good decisions and some delegate authority to staff to settle parcels up to certain limits. This is a matter of experience, project complexity and professional judgment rather than an employee's job title. The ROW manager must justify settlement terms to the ROW Division, and this provides the necessary oversight.

Finally, ROW managers are involved in decisions to buy out property owners in the entirety, and we believe the districts are making good decisions based on property owner needs.

- 2.3 Putting the STIP together involves many factors; factors that are considered by our Transportation Planning division, the FHWA and the districts, and are included in our planning framework, which involves all of our planning partners. We will continue to purchase future ROW when it is deemed prudent to do so by all these individuals. We will work to better document the reasons for the decisions.
- 2.4 We feel confident our parcel acquisition database is a good tool for tracking and reporting. Districts were recently instructed to enter all appropriate data. We will monitor compliance using ROW division and internal audit staff.

Regarding your recommendations on leasing ROW property, our response is as follows:

- 3.1 We are now requiring a rental study in every file and checking for proper documentation when the ROW director signs the leases.
- 3.2 We will be better able to track future ROW when the Realty Asset Inventory Database is fully populated with data. The database will assist us in more aggressively marketing disposals and leases.
- 3.3 The new Realty Asset Inventory Database is just being rolled out, but will provide us a much-improved record system. The ROW division will monitor data to ensure the database is being updated as necessary.

Should you have any questions about these responses, please contact Roberta Broecker at 751-2467.

Sincerely,



David B. Nichols, P.E.
Director of Project Development

lh

cc: Mr. Terry Sampson - rw
Ms. Roberta Broecker - ai
Mr. Jim Deresinski - ct